

STATE OF MICHIGAN
COURT OF APPEALS

FORSYTH TOWNSHIP,

Plaintiff-Appellee,

v

KARL MALASHANKO,

Defendant-Appellant.

UNPUBLISHED
March 25, 2008

No. 275570
Marquette Circuit Court
LC No. 06-043792-CZ

Before: Fitzgerald, P.J., and Smolenski and Beckering, JJ.

PER CURIAM.

The trial court entered a judgment in favor of plaintiff, Forsyth Township, after finding that defendant violated the Forsyth Township Miscellaneous Debris Ordinance, § 2.1. The court ordered defendant to remove all identified miscellaneous debris from his lakefront property by September 1, 2007, and to cooperate with plaintiff and its agents in enforcing the judgment and equitable decree. We affirm.

Defendant owns a ten-acre parcel of lakefront property on which he has accumulated approximately 35 vehicles, in addition to large quantities of other items, including used hospital equipment such as x-ray machines. In 2005, defendant was cited under the township's miscellaneous debris ordinance for maintaining miscellaneous debris on his property. Despite formal notice of his violation of the ordinance and requests to clean up the debris, defendant failed to respond and resolve the violation. The township thereafter filed the present suit, asserting that defendant's continued maintenance of miscellaneous debris constituted a continuing violation of the ordinance, and presented a risk to the health and welfare of the public, as well as to the aesthetic value to the surrounding landowner and community at large.

At the trial on this matter, Henry DeGroot, the Forsyth Township Assessor and person responsible for enforcing the miscellaneous debris ordinance, testified that defendant's property contained inoperative vehicles, x-ray equipment, scrap metal, and other miscellaneous junk. He conceded that the miscellaneous debris ordinance does not limit the amount of vehicles that can be on a property.

According to defendant, two of the vehicles on his property are not in good and safe operating condition, and five of the vehicles do not run. The hospital equipment consists of used x-ray machines, linear accelerators, surgical lasers, and nuclear medicine equipment that has been discarded by the hospital at which defendant is employed. Defendant stores the equipment

outdoors on his property, and occasionally sells parts from the equipment back to the hospital as replacement parts. Defendant conceded that his property is like a “junk storage yard.” However, he maintained that none of the items stored on his property are visible from the lake, the road, or neighboring property, with the exception of some vehicles that are stored fifty feet from a neighbor’s property line and are observable from that property. Defendant also maintained that none of the items posed a threat to the health, safety, or welfare of the public.

At the conclusion of proofs, the trial court noted that the sole purpose of the trial was to determine “whether or not there’s been a violation of the miscellaneous debris ordinance.” The trial court found that defendant violated the miscellaneous debris ordinance “and that he has on his property miscellaneous debris, as defined in the ordinance, that represents a hazard to health, safety, or welfare of the property.” The court stated in part:

the violation includes, at least, the five automobiles that he concedes are not safe and operable; at least the x-ray equipment and computer equipment stored outside subject to the elements that the Court finds cannot be safely and properly usable for the purposes for which they were manufactured; at least to the extent there are old tires and obvious junk on the premises, and that those items constitute a nuisance and a danger to the public safety.

The court noted that it did not have sufficient evidence before it to specifically determine which items, other than the inoperable vehicles, x-ray equipment, junk tires, and “obvious junk” on defendant’s property constituted miscellaneous debris. After further discussion with the parties on the record, the court ultimately ordered plaintiff to identify all items of miscellaneous debris for removal on or before June 1, 2007, and that “defendant shall remove all such identified miscellaneous debris by September 1, 2007, failing which, the Township shall have the right to enter upon the premises and remove or have removed such identified miscellaneous debris pursuant to the terms of the ordinance.” The court retained jurisdiction only “for purposes of the enforcement of this Judgment and equitable Decree.”

Section 1.2(C) of the Forsyth Township, Miscellaneous Debris Ordinance provides as follows:

The term “Miscellaneous Debris” is defined to include unsheltered storage in open areas on property in Forsyth Township of scrap iron and other metals; paper; rags; rubber tires; glass; old, unused, stripped junked or other automobiles not in good and safe operating condition; and any vehicles, machinery, implements, equipment or personal property of any kind which is no longer safely or properly useable for the purposes for which it was manufactured and which create a hazard to the health, safety or welfare of the public.

Section 2.1 of the ordinance provides as follows:

It is hereby declared the duty of every person who owns, occupies or leases any real property within Forsyth Township in the County of Marquette to

maintain such property in a safe and orderly manner and to remove any dead grass, brush or miscellaneous-debris from open areas and dispose of it in a manner provided by law.

Defendant argues that the trial court's finding that defendant's unsheltered storage of inoperable vehicles, used hospital equipment, and old tires and other "obvious junk" violates Forsyth Township's miscellaneous debris ordinance is clearly erroneous. He presents the narrow argument that plaintiff failed to meet its burden of proving that the storage of these items creates a hazard to the health, safety, and welfare of the public. Essentially, he contends that testimony regarding trespassing, vandalism, criminal activity, and threat of drinking water contamination is insufficient to support the trial court's finding that plaintiff's keeping of what he conceded is the equivalent of a "junk storage yard" creates a hazard to the health, safety, or welfare of the public.

We review a trial court's findings of fact after a bench trial for clear error and its legal conclusions de novo. MCR 2.613(C); *Harbor Park Market, Inc v Gronda*, 277 Mich App 126, 130, 743 NW2d 585 (2007); *Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 249; 701 NW2d 144 (2005). A trial court's findings are clearly erroneous only when the appellate court is left with a definite and firm conviction that a mistake has been made. *Harbor Park Market, supra*.

Forsyth Township's miscellaneous debris ordinance defines two categories of miscellaneous debris: (1) unsheltered storage in open areas of scrap iron and other metals; paper; rags; rubber tires; glass; old, unused, stripped, junked or other automobiles not in good and safe operating condition; and (2) unsheltered storage in open areas of any vehicles, machinery, implements, equipment or personal property of any kind which is no longer safely or properly useable for the purposes for which it was manufactured and which create a hazard to the health, safety, or welfare of the public. The first category includes items that are clearly identifiable as debris, such as scrap metal and stripped vehicles. The second category includes items not so readily identifiable as debris, and places two conditions on classifying such items as debris: (1) that the item is no longer safely or properly useable for the purposes for which it was manufactured, and (2) that the item create a hazard to the health, safety, or welfare of the public.

Under the first category, which clearly includes the inoperable vehicles, tires, and "obvious junk" on defendant's property, the ordinance does not require that such items create a hazard to the health, safety or welfare of the public. The trial court did not clearly err in finding that defendant's storage of these unsheltered items on his property violates the miscellaneous debris ordinance. Further, given defendant's description of the used hospital equipment that he stores on his property, we conclude that this equipment is properly classified as "scrap iron and other metals." Indeed, defendant indicated that the equipment was discarded by the hospital, is kept outside and subject to the elements, and is stored by him for the purpose of providing "parts." Even assuming that the used hospital equipment does not constitute "scrap iron and other metals," it is clear that the equipment is not used for the purposes for which it was manufactured. Further, given the nature of the equipment, as well as the testimony regarding

vandalism and theft on defendant's property, we find that the trial court's finding that the storage of the used hospital equipment creates a hazard to the health, safety, or welfare of the public is not clearly erroneous. The trial court did not clearly err in finding that the unsheltered storage of the used hospital equipment violates the miscellaneous debris ordinance.¹

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Michael R. Smolenski

/s/ Jane M. Beckering

¹ The court left the determination of which additional items stored on defendant's property, other than the inoperable vehicles, used hospital equipment, tires, and "obvious junk," violated the miscellaneous debris ordinance to the discretion of the township.